

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 686

Introduced by Assembly Member Daly

February 25, 2015

An act to add Section 6126.8 to amend Section 1871.7 of the Business and Professions Insurance Code, relating to attorneys: insurance fraud.

LEGISLATIVE COUNSEL'S DIGEST

AB 686, as amended, Daly. ~~Unauthorized practice of law: referrals. Insurance: fraud prevention.~~

Existing law prohibits knowingly employing runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or benefits under workers' compensation coverage, or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer. Existing law authorizes a district attorney, the Insurance Commissioner, or an interested person to bring a civil action for a violation of these prohibitions, as specified, and makes a person who commits a violation subject to a civil penalty of not less than \$5,000 and not more than \$10,000.

This bill would similarly prohibit a person from acting in the capacity of a runner, capper, or steerer, or to otherwise procure clients or patients to perform or obtain services or benefits under workers' compensation coverage, or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer. The district attorney, the commissioner, or an interested person

would be authorized to bring a civil action for a violation of these provisions.

~~The State Bar Act provides for the licensure and regulations of attorneys by the State Bar of California, a public corporation. The act prohibits persons who are not active members of the State Bar from practicing law in California, defined as including, among other things, advertising or holding himself or herself out as entitled to practice law or literally translating from English into another language, in any document, any words that imply that he or she is an attorney. The law makes a violation of this prohibition a misdemeanor.~~

~~This bill would expand that prohibition to include referring a person injured in the course of employment to a lawyer or law firm for professional services in connection with the injury. The bill would impose a civil penalty of up to \$2,500 per day for each referral and require the State Bar to assess and collect the penalty in a civil action, as specified. By expanding the scope of a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1871.7 of the Insurance Code is amended
- 2 to read:
- 3 1871.7. (a) (1) It is unlawful to knowingly employ runners,
- 4 cappers, steerers, or other persons to procure clients or patients to
- 5 perform or obtain services or benefits pursuant to Division 4
- 6 (commencing with Section 3200) of the Labor Code or to procure
- 7 clients or patients to perform or obtain services or benefits under
- 8 a contract of insurance or that will be the basis for a claim against
- 9 an insured individual or his or her insurer.
- 10 (2) It is unlawful for a person to act in the capacity of a runner,
- 11 capper, or steerer, or to otherwise procure clients or patients to
- 12 perform or obtain services or benefits pursuant to Division 4
- 13 (commencing with Section 3200) of the Labor Code or to procure

clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer.

(b) Every person who violates any provision of this section or Section 549, 550, or 551 of the Penal Code shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), plus an assessment of not more than three times the amount of each claim for compensation, as defined in Section 3207 of the Labor Code or pursuant to a contract of insurance. The court shall have the power to grant other equitable relief, including temporary injunctive relief, as is necessary to prevent the transfer, concealment, or dissipation of illegal proceeds, or to protect the public. The penalty prescribed in this paragraph shall be assessed for each fraudulent claim presented to an insurance company by a defendant and not for each violation.

(c) The penalties set forth in subdivision (b) are intended to be remedial rather than punitive, and shall not preclude, nor be precluded by, a criminal prosecution for the same conduct. If the court finds, after considering the goals of disgorging unlawful profit, restitution, compensating the state for the costs of investigation and prosecution, and alleviating the social costs of increased insurance rates due to fraud, that such a penalty would be punitive and would preclude, or be precluded by, a criminal prosecution, the court shall reduce that penalty appropriately.

(d) The district attorney or commissioner may bring a civil action under this section. Before the commissioner may bring that action, the commissioner shall be required to present the evidence obtained to the appropriate local district attorney for possible criminal or civil filing. If the district attorney elects not to pursue the matter due to insufficient resources, then the commissioner may proceed with the action.

(e) (1) Any interested persons, including an insurer, may bring a civil action for a violation of this section for the person and for the State of California. The action shall be brought in the name of the state. The action may be dismissed only if the court and the district attorney or the commissioner, whichever is participating, give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the district attorney and commissioner. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The local district attorney or commissioner may elect to intervene and proceed with the action within 60 days after he or she receives both the complaint and the material evidence and information. If more than one governmental entity elects to intervene, the district attorney shall have precedence.

(3) The district attorney or commissioner may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). The motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the district attorney or commissioner shall either:

(A) Proceed with the action, in which case the action shall be conducted by the district attorney or commissioner.

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person or governmental agency brings an action under this section, no person other than the district attorney or commissioner may intervene or bring a related action based on the facts underlying the pending action unless that action is authorized by another statute or common law.

(f) (1) If the district attorney or commissioner proceeds with the action, he or she shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. That person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2) (A) The district attorney or commissioner may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the district attorney or commissioner of the filing of the motion, and the court has

1 provided the person with an opportunity for a hearing on the
2 motion.

3 (B) The district attorney or commissioner may settle the action
4 with the defendant notwithstanding the objections of the person
5 initiating the action if the court determines, after a hearing, that
6 the proposed settlement is fair, adequate, and reasonable under all
7 the circumstances. Upon a showing of good cause, the hearing
8 may be held in camera.

9 (C) Upon a showing by the district attorney or commissioner
10 that unrestricted participation during the course of the litigation
11 by the person initiating the action would interfere with or unduly
12 delay the district attorney's or commissioner's prosecution of the
13 case, or would be repetitious, irrelevant, or for purposes of
14 harassment, the court may, in its discretion, impose limitations on
15 the person's participation, including, but not limited to, the
16 following:

- 17 (i) Limiting the number of witnesses the person may call.
- 18 (ii) Limiting the length of the testimony of those witnesses.
- 19 (iii) Limiting the person's cross-examination of witnesses.
- 20 (iv) Otherwise limiting the participation by the person in the
21 litigation.

22 (D) Upon a showing by the defendant that unrestricted
23 participation during the course of the litigation by the person
24 initiating the action would be for purposes of harassment or would
25 cause the defendant undue burden or unnecessary expense, the
26 court may limit the participation by the person in the litigation.

27 (3) If the district attorney or commissioner elects not to proceed
28 with the action, the person who initiated the action shall have the
29 right to conduct the action. If the district attorney or commissioner
30 so requests, he or she shall be served with copies of all pleadings
31 filed in the action and shall be supplied with copies of all deposition
32 transcripts, at the district attorney's or commissioner's expense.
33 When a person proceeds with the action, the court, without limiting
34 the status and rights of the person initiating the action, may
35 nevertheless permit the district attorney or commissioner to
36 intervene at a later date upon a showing of good cause.

37 (4) If at any time both a civil action for penalties and equitable
38 relief pursuant to this section and a criminal action are pending
39 against a defendant for substantially the same conduct, whether
40 brought by the government or a private party, the civil action shall

1 be stayed until the criminal action has been concluded at the trial
2 court level. The stay shall not preclude the court from granting or
3 enforcing temporary equitable relief during the pendency of the
4 actions. Whether or not the district attorney or commissioner
5 proceeds with the action, upon a showing by the district attorney
6 or commissioner that certain actions of discovery by the person
7 initiating the action would interfere with a law enforcement or
8 governmental agency investigation or prosecution of a criminal
9 or civil matter arising out of the same facts, the court may stay
10 discovery for a period of not more than 180 days. A hearing on a
11 request for the stay shall be conducted in camera. The court may
12 extend the 180-day period upon a further showing in camera that
13 the agency has pursued the criminal or civil investigation or
14 proceedings with reasonable diligence and any proposed discovery
15 in the civil action will interfere with the ongoing criminal or civil
16 investigation or proceedings.

17 (5) Notwithstanding subdivision (e), the district attorney or
18 commissioner may elect to pursue its claim through any alternate
19 remedy available to the district attorney or commissioner.

20 (g) (1) (A) (i) If the district attorney proceeds with an action
21 brought by a person under subdivision (e), that person shall, subject
22 to subparagraph (B), receive at least 30 percent but not more than
23 40 percent of the proceeds of the action or settlement of the claim,
24 depending upon the extent to which the person substantially
25 contributed to the prosecution of the action.

26 (ii) If the commissioner has brought an action or has proceeded
27 with an action brought by another person under this section on or
28 after January 1, 2006, the commissioner shall be entitled to
29 attorney's fees and costs in addition to any judgment, regardless
30 of the date that judgment is entered. The court shall determine and
31 award the commissioner the amount of reasonable attorney's fees,
32 including, but not limited to, reasonable fees for time expended
33 by attorneys employed by the department and for costs incurred.
34 Any attorney's fees or costs awarded to the commissioner and
35 collected shall be deposited in the Insurance Fund. In cases in
36 which the commissioner has intervened, the commissioner and the
37 person bringing the claim may stipulate to an allocation. The court
38 may allocate the funds pursuant to the stipulation if, after the
39 court's ruling on objection by the district attorney, if any, the court
40 finds it is in the interests of justice to follow the stipulation.

1 (iii) If the commissioner has proceeded with an action, if there
2 is no stipulation regarding allocation, and if a judgment has been
3 obtained or a settlement has been reached with the defendants, the
4 court shall determine the allocation, upon motion of the
5 commissioner or the person bringing the action, according to the
6 following priority:

7 (I) The person bringing the action, regardless of whether that
8 person paid money to the defendants as part of the acts alleged in
9 the complaint, shall first receive the amount the court determines
10 is reasonable for attorney's fees, costs, and expenses that the court
11 determines to have been necessarily incurred.

12 (II) The commissioner shall receive the amount the court
13 determines for reasonable attorney's fees and costs.

14 (III) If the person bringing the suit has paid moneys to the
15 defendants as part of the acts alleged in the complaint, that person
16 shall receive the amount paid to the defendants.

17 (IV) At least 30 percent, but not more than 40 percent, of the
18 remaining assets or moneys, shall be allocated to the person
19 bringing the action, depending upon the extent to which the person
20 substantially contributed to the prosecution of the action.

21 (iv) Those portions of a judgment or settlement not distributed
22 pursuant to this subdivision shall be paid to the General Fund of
23 the state and, upon appropriation by the Legislature, shall be
24 apportioned between the Department of Justice and the Department
25 of Insurance for enhanced fraud investigation and prevention
26 efforts.

27 (B) ~~Where~~ If the action is one that the court finds to be based
28 primarily on disclosures of specific information, other than
29 information provided by the person bringing the action, relating
30 to allegations or transactions in a criminal, civil, or administrative
31 hearing, in a legislative or administrative report, hearing, audit, or
32 investigation, or from the news media, the court may award those
33 sums that it considers appropriate, but in no case more than 10
34 percent of the proceeds, taking into account the significance of the
35 information and the role of the person bringing the action in
36 advancing the case to litigation.

37 (C) Any payment to a person under subparagraph (A) or under
38 subparagraph (B) shall be made from the proceeds. The person
39 shall also receive an amount for reasonable expenses that the court
40 finds to have been necessarily incurred, plus reasonable attorney's

1 fees and costs. All of those expenses, fees, and costs shall be
2 awarded against the defendant.

3 (2) (A) If the district attorney or commissioner does not proceed
4 with an action under this section, the person bringing the action
5 or settling the claim shall receive an amount that the court decides
6 is reasonable for collecting the civil penalty and damages. Except
7 as provided in subparagraph (B), the amount shall not be less than
8 40 percent and not more than 50 percent of the proceeds of the
9 action or settlement and shall be paid out of the proceeds. That
10 person shall also receive an amount for reasonable expenses that
11 the court finds to have been necessarily incurred, plus reasonable
12 attorney's fees and costs. All of those attorney's fees and costs
13 shall be imposed against the defendant. The parties shall serve the
14 commissioner and the local district attorney with complete copies
15 of any and all settlement agreements, and terms and conditions,
16 for actions brought under this article at least 10 days prior to filing
17 any motion for allocation with the court under this paragraph. The
18 court may allocate the funds pursuant to the settlement agreement
19 if, after the court's ruling on objection by the commissioner or the
20 local district attorney, if any, the court finds it is in the interests
21 of justice to follow the settlement agreement.

22 (B) If the person bringing the action, as a result of a violation
23 of this section has paid money to the defendant or to an attorney
24 acting on behalf of the defendant in the underlying claim, then he
25 or she shall be entitled to up to double the amount paid to the
26 defendant or the attorney if that amount is greater than 50 percent
27 of the proceeds. That person shall also receive an amount for
28 reasonable expenses that the court finds to have been necessarily
29 incurred, plus reasonable attorney's fees and costs. All of those
30 expenses, fees, and costs shall be awarded against the defendant.

31 (3) If a local district attorney has proceeded with an action under
32 this section, one-half of the penalties not awarded to a private
33 party, as well as any costs awarded shall go to the treasurer of the
34 appropriate county. Those funds shall be used to investigate and
35 prosecute fraud, augmenting existing budgets rather than replacing
36 them. All remaining funds shall go to the state and be deposited
37 in the General Fund and, when appropriated by the Legislature,
38 shall be apportioned between the Department of Justice and the
39 Department of Insurance for enhanced fraud investigation and
40 prevention efforts.

1 (4) Whether or not the district attorney or commissioner
2 proceeds with the action, if the court finds that the action was
3 brought by a person who planned and initiated the violation of this
4 section, that person shall be dismissed from the civil action and
5 shall not receive any share of the proceeds of the action. The
6 dismissal shall not prejudice the right of the district attorney or
7 commissioner to continue the action on behalf of the state.

8 (5) If the district attorney or commissioner does not proceed
9 with the action, and the person bringing the action conducts the
10 action, the court may award to the defendant its reasonable
11 attorney's fees and expenses if the defendant prevails in the action
12 and the court finds that the claim of the person bringing the action
13 was clearly frivolous, clearly vexatious, or brought primarily for
14 purposes of harassment.

15 (h) (1) In no event may a person bring an action under
16 subdivision (e) that is based upon allegations or transactions that
17 are the subject of a civil suit or an administrative civil money
18 penalty proceeding in which the Attorney General, district attorney,
19 or commissioner is already a party.

20 (2) (A) No court shall have jurisdiction over an action under
21 this section based upon the public disclosure of allegations or
22 transactions in a criminal, civil, or administrative hearing in a
23 legislative or administrative report, hearing, audit, or investigation,
24 or from the news media, unless the action is brought by the
25 Attorney General or the person bringing the action is an original
26 source of the information.

27 (B) For purposes of this paragraph, "original source" means an
28 individual who has direct and independent knowledge of the
29 information on which the allegations are based and has voluntarily
30 provided the information to the district attorney or commissioner
31 before filing an action under this section that is based on the
32 information.

33 (i) Except as provided in subdivision (j), the district attorney or
34 commissioner is not liable for expenses that a person incurs in
35 bringing an action under this section.

36 (j) In civil actions brought under this section in which the
37 commissioner or a district attorney is a party, the court shall retain
38 discretion to impose sanctions otherwise allowed by law, including
39 the ability to order a party to pay expenses as provided in Sections
40 128.5 and 1028.5 of the Code of Civil Procedure.

(k) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. That relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring an action in the appropriate superior court for the relief provided in this subdivision. The remedies under this section are in addition to any other remedies provided by existing law.

(l) (1) An action pursuant to this section may not be filed more than three years after the discovery of the facts constituting the grounds for commencing the action.

(2) Notwithstanding paragraph (1) no action may be filed pursuant to this section more than eight years after the commission of the act constituting a violation of this section or a violation of Section 549, 550, or 551 of the Penal Code.

~~SECTION 1. Section 6126.8 is added to the Business and Professions Code, to read:~~

~~6126.8. (a) It is a violation of subdivision (a) of Section 6126 for any person who is not licensed to practice law in this state to receive a fee or any other form of compensation from a lawyer, law firm, or agent or employee of a lawyer or law firm for referring a person injured in the course of employment to a lawyer or law firm for professional services in connection with the injury.~~

~~(b) (1) In addition to any other remedies and penalties prescribed in this article, a person who violates this section shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day for each violation, to be assessed and collected in a civil action brought by the State Bar.~~

~~(2) The court shall grant a prevailing plaintiff reasonable attorney's fees and costs.~~

1 ~~(3) A civil action brought under this section shall be commenced~~
2 ~~within four years after the cause of action accrues.~~

3 ~~(4) In a civil action brought by the State Bar under this section,~~
4 ~~the civil penalty collected shall be paid to the State Bar and~~
5 ~~allocated to the civil enforcement of violations of subdivision (a)~~
6 ~~of Section 6126, including actions brought under this section.~~

7 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
8 ~~Section 6 of Article XIII B of the California Constitution because~~
9 ~~the only costs that may be incurred by a local agency or school~~
10 ~~district will be incurred because this act creates a new crime or~~
11 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
12 ~~for a crime or infraction, within the meaning of Section 17556 of~~
13 ~~the Government Code, or changes the definition of a crime within~~
14 ~~the meaning of Section 6 of Article XIII B of the California~~
15 ~~Constitution.~~